

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1106 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No @@
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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

\JAJ SABBIR ALI PIRJADA

Versus

GULAMBHAI HUSSAINBHAI IBRAHIM

Appearance:

MR DR BHATT for Petitioner

NOTICE SERVED for Respondent No. 1
MR MG NAGARKAR for Respondent No. 2

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.C.PATEL
Date of decision: 10/09/98

ORAL JUDGEMENT

(Per : Panchal, J.)

Learned Counsel for the appellant seeks permission to reduce claim for jurisdiction and court fees to Rs.20,000/-. Permission as prayed for is granted. Learned Counsel for the appellant further prays to delete respondent no.1 from the present proceedings. Having regard to the facts of the case, that prayer is also granted. Name of respondent no.1 accordingly, stands deleted from the present appeal.

Admitted. Mr. M.G.Nagarkar, learned Counsel waives service of notice on behalf of the respondent. At the request of learned Counsel appearing for the parties, the appeal is taken-up for final hearing today.

2. By means of filing this appeal under section 110-D of the Motor Vehicles Act, 1939, the appellant has claimed enhancement in the amount of compensation awarded by the Motor Accident Claims Tribunal, Valsad at Navsari, in M.V.Claim Petition No.398/84 by judgment and award dated July 30, 1988.

3. The accident took place on August 22, 1984 at about 5.00 p.m. when the appellant was going from Navsari to Maroli on a scooter bearing registration No. GRD-8744 belonging to his friend Bhupendrabhai. The appellant was pillion rider. Near village Kadipor, one S.T.bus bearing registration no.GR-7109, which was coming from opposite direction, dashed with the scooter which was being driven by the friend of the appellant. As a result of the accident, the appellant and his friend were thrown off. The appellant sustained fracture in his leg. He was required to take treatment for about 53 days. At the time of accident, he was aged 24 years and was studying in 2nd year B.Com. The appellant instituted M.V.Claim petition no.398/84 before Motor Accident Claims Tribunal, Valsad at Navsari and claimed compensation of Rs.1,50,000/-.

4. The respondent filed written statement at exh.11

and controverted the averments made in the claim petition. In the written statement, it was pleaded that Bhupendrabhai, who was driving the scooter, was negligent and, therefore, Gujarat State Road Transport Corporation was not liable to satisfy the claim advanced by the appellant.

5. Having regard to the pleadings of parties, the Tribunal framed issues for determination. After taking into consideration the evidence led by the claimant and the opponents, the Tribunal held that original opponent no.1 was rash and negligent in driving S.T.bus, which resulted into accident. The Tribunal thereafter considered the question of compensation to be paid to the appellant. Though it was asserted by the appellant that he was doing brokerage of diamond and earning Rs.1000/per month, no evidence was led to establish the said fact and, therefore, the Tribunal assessed income of the appellant at Rs.1000/- per month. The appellant had produced bills of medicines at exh.20 to 70 & 83. Placing reliance on those bills, the Tribunal awarded a sum of Rs.8,620/- to the appellant for medicines and other charges incurred by the appellant for treatment of the injuries. Relying upon the deposition of Dr.Shaikh, which was recorded at exh.81, the Tribunal assessed disability of entire body at 15% and after applying multiplier of 15, awarded a sum of Rs. 27,000/- as future loss of income. Over and above this amount, an amount of Rs. 10,000/- was awarded to the appellant for pain, shock and suffering; whereas Rs. 2,000/- came to be awarded for further operation regarding removal of nail. In all, the Tribunal awarded Rs. 47,620/- to the appellant as compensation, with running interest at the rate of 9% per annum from the date of application till realisation and proportionate costs, vide judgment and award dated July 30, 1988, giving rise to present appeal.

6. Learned Counsel for the appellant submitted that having regard to the facts of the case, income of the appellant ought to have been assessed at Rs.1500/- per month and as the appellant was aged about 24 years at the time of accident, higher multiplier ought to have been applied by the Tribunal to the facts of the case and, therefore, amount of compensation deserves to be enhanced accordingly.

7. Mr. M.G.Nagarkar, learned Counsel for the respondent contended that after taking into consideration the age of the appellant as well as other relevant factors, the Tribunal has awarded a just sum and, therefore, Court should not interfere with the same in

the present appeal.

8. We have considered the facts of the case. The record indicates that the appellant is B.Com. LL.B. Under the circumstances, income of the appellant should not have been assessed at Rs.1000/- per month. Moreover, the appellant was aged about 24 years when the accident took place and, therefore, we are of the view that higher multiplier ought to have been applied by the Tribunal to the facts of the case. The evidence of the Doctor would show that further surgery was needed in the case of the appellant and, therefore, more than Rs.2000/- ought to have been awarded for further medical treatment. Taking the overall view of the matter, we are of the opinion that interest of justice would be served if an additional amount of Rs.15,000/- (Rupees fifteen thousand only) in all, inclusive of costs and interest, is awarded to the appellant.

For the foregoing reasons, the appeal partly succeeds. An additional amount of Rs. 15,000/- (Rupees Fifteen Thousand only) in all, including interest and costs is awarded to the appellant. The award passed by the Tribunal stands accordingly, modified. The respondent is directed to deposit the additional amount of compensation as early as possible and preferably within three months from today in the Tribunal.

As the appellant is permitted to reduce the claim for court fees and jurisdiction, the appellant would be entitled to refund of court fees in accordance with law.

The appeal is partly allowed with no order as to costs.

(patel)